

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:

Disputes concerning the payment of
prevailing wage rates and proposed debarment
for Labor standards violations by:

CIVIL ACTION

R. KALLER, INC., a corporation, and
RICHARD KALLER, Individually and as
corporate officer,

No. 95-DBA-19

Prime Contractor

MARCOR OF PA., INC., a corporation

Subcontractor

With respect to roof repair on Contracts
No. N62472-89-C-0435, Navy Aviation Supply
Office,

DECISION AND ORDER PURSUANT TO CONSENT FINDINGS
BETWEEN THE ADMINISTRATOR, EMPLOYMENT STANDARDS
ADMINISTRATION, WAGE AND HOUR DIVISION
OF THE UNITED STATES DEPARTMENT OF LABOR AND
RESPONDENTS R. KALLER, INC., RICHARD KALLER

This is a proceeding under the Davis-Bacon Act, as amended (40 U.S.C. 276a, et seq.), the Contract Work Hours and Safety Standards Act (40 U.S.C. §327, et seq.), and the applicable regulations issued thereunder at 29 C.F.R. Part 5, Section 5.11(b). The Administrator and Respondents R. Kaller, Inc., Richard have filed Consent Findings resolving the portion of the case relating to respondents' contest of the Administrator's findings regarding their

performance as a subcontractor on Navy Contract N62472-89-C-0435. The Consent Findings are marked for identification as ALJ No. 1, and are attached hereto and made a part hereof. The Court has examined the stipulations of fact and conclusions of law contained therein, and concludes that all issues in contest between the Administrator and respondents have been resolved. Accordingly,

IT IS ORDERED that the Consent Findings (ALJ No. 1) be, and the same hereby are APPROVED, and

Furthermore, IT IS ORDERED that as a result of the underpayment of compensation of respondents' employees, backwages in the total amount of \$28,300 are due to respondents' employees listed on the Schedule A which is attached to and made a part of the Consent Findings. The United States Department of Labor, Wage and Hour Division is hereby authorized to disburse the monies withheld by the Department of the Navy in the amount of \$28,300 directly to the employees listed on the Schedule A attached to the Consent Findings. Any remaining amounts shall be released to respondent R. Kaller, Inc.

FINALLY, IT IS FURTHER ORDERED that the Consent Findings be made a part of the record.

DATED: August 5, 1997

Ralph A. Romano
Administrative Law Judge

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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Subcontractor

With respect to roof repair on Contracts
No. N62472-89-C-0435, Navy Aviation Supply
Office,

CONSENT FINDINGS BETWEEN THE ADMINISTRATOR
EMPLOYMENT STANDARDS ADMINISTRATION, WAGE AND HOUR
DIVISION OF THE UNITED STATES DEPARTMENT OF LABOR
AND RESPONDENT R. KALLER INC., RICHARD KALLER

The Administrator. Employment Standards Administration, Wage and Hour Division of the United States Department of Labor, ("Administrator"), by the undersigned attorneys, and the respondents. R. Kaller, Inc., Richard Kaller (hereinafter referred to as "respondents"), by their counsel hereby stipulate and agree on this 4 day of August, 1997, to the following Consent Findings:

Respondent Kaller, was awarded a general construction contract by the United States Naval Facilities Engineering Command for the construction and renovation of the Naval Aviation

Supply Building in Philadelphia Pennsylvania.

II.

This general renovation and construction contract, in excess of \$500,000, was funded by the United States Navy. This construction contract was subject to Wage Decision No. PA 91-5.

III.

The U.S. Navy construction contract identified in paragraph II herein contained the representations, prevailing wage requirements and stipulations required by the Labor standards provisions of the Davis-Bacon Act, as amended (40 U.S.C. §276a, et seq.), the Contract Work Hours and Safety Standards Act (40 U.S.C. § 327, et seq.), ("CWHSSA"), and the applicable regulations issued thereunder at 29 C.F.R. Part 5.

IV.

Respondents were notified of the Administrator's finding that they had failed to pay laborers and mechanics the required prevailing wage rates. They given-an opportunity to contest the Administrator's findings and to request a hearing before an Administrative Law Judge.

VI.

Counsel for respondents contested the Administrator's findings and requested a hearing on the disputed issues.

An Order of Reference in the above-captioned matter was filed by counsel for the Administrator with the Office of Administrative Law Judges. The Order of Reference charged respondents with violations of the Act and regulations issued thereunder.

VIII.

More specifically, the Order of Reference charged R. Kaller, Richard Kaller with misclassifying some of its employees by failing to pay employees, who periodically performed the tasks and duties of roofers during the performance of the contract, the required prevailing wage rate.

X.

Counsel for the Administrator and counsel for the respondents have discussed this matter, and desire to resolve this matter without the burden, expense and delay of further litigation.

xi.

Respondents, without admitting they committed the aforesaid violations, and as a good faith resolution of their dispute with the Administrator concerning the alleged wage and fringe benefit payment violations, hereby agree to withdraw their contest to the findings of the Administrator. Respondents further agree that backwages in the total amount of \$28,300 are due to the employees listed on the Schedule A attached hereto and made a part of these Consent Findings. The Administrator agrees to the release of the remaining withheld monies to the respondent R. Kaller; in the amount of \$3100.00.

XII.

The Administrator, in consideration of the facts of this case and other pertinent litigation factors, hereby agrees to accept this withdrawal of contest from respondents in full and complete settlement of this matter.

XIII.

The Administrator and Respondents hereby consent that the above Consent Findings and the Order disposing of this proceeding, shall have, in accordance with 29 C.F.R. Part 6, Section 6.32. the following effect:

1. That the Consent Findings and Order entered into in accordance with this agreement shall have the same force and effect as an Order made after full hearing;

2. That the entire record on which any Order may be based shall consist solely of the Order of Reference, Notification Letter, and the Consent Findings;

3. That the Administrator and Respondents waive any further procedural steps before the Office of Administrative Law Judges or Wage Appeals Board regarding the matters which are the subject of the Order of Reference and Consent Findings; and

4. That the Administrator and Respondents waive any right to challenge or contest the validity of the Consent Findings and Order entered into accordance with this agreement.

NOW, therefore, agreement having been reached by the Administrator and

Respondents as to all charges set forth in the Administrator's Order of Reference, which

concern respondents R. Kaller, Inc., Richard Kaller, the parties **further** stipulate and agree that

each party shall bear its own costs as to this proceeding. Each party agrees to bear its own

attorneys' fees, costs and other expenses incurred by such party in connection with any stages of the

above-referenced proceeding including, but not limited to, attorney's fees and costs which may be available under the Equal Access to Justice Act, as amended.

R. KALLER, INC., RICHARD KALLER,

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Attorney for Respondents

Y Davitt McAteer
Acting Solicitor of Labor

Deborah Pierce-Shields
Regional Solicitor

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